

REMARKS

Reconsideration and withdrawal of the rejections set forth in the Office Action dated December 10, 2007, is respectfully requested in view of this amendment. By this amendment, numerous changes were made to the Specification and a new drawing figure, Fig. 3, was inserted. In the claims, claims 2, 5, and 12 have been cancelled, claims 1, 3, 4, 6-8, 10 and 13-20 have been amended, and new claim 22 has been inserted. Claims 1, 3, 4, 6-11, 13-20 and 22 are pending in this application.

The cancellation of claims 2, 5, 12 and 21 and the limitations as applied to the remaining independent claims is made without prejudice to later prosecution of the subject matter of these claims in this application or a subsequent continuation application.

It is respectfully submitted that the above amendments introduce no new matter within the meaning of 35 U.S.C. §132.

In the outstanding Office Action, the Examiner objected to claim 7, objected to the Specification, and objected to the Drawings. Claim 7 was rejected under 35 U.S.C. §112, second paragraph. Claims 1, 2, 5 and 7-18 were rejected under 35 U.S.C. §103(a) as unpatentable over PCT Document WO 00/37393 to Wadewitz (hereinafter *Wadewitz '393*), taken in view of U.S. Patent No. 6,596,050 to Rihtamo et al. (hereinafter *Rihtamo*). Claims 3, 4 and 6 were rejected under 35 U.S.C. §103(a) as unpatentable over *Wadewitz '393* in view of *Rihtamo*, taken further in view of Petzinger, U.S. Patent No. 4,108,609 (hereinafter *Petzinger*). Claims 19 and 20 were rejected under 35 U.S.C. §103(a) as unpatentable over *Wadewitz '393* in view of *Petzinger*.

In addition, claims 8 and 12-19 were rejected under the doctrine of obvious-type double patenting over combinations of the above references and U.S. 6,703,234 (*Wadewitz '234*).

Objections to the Specification

The Examiner objected to the specification as not providing antecedent basis for the subject matter of the claims.

Response

By this amendment, the specification has been revised and is believed to present antecedent basis for the subject matter as presented in the original claims.

Objections to the Drawings

The Examiner objected to the drawings as not showing each and every feature in the claims. In addition, element 11 was cited as undescribed in the specification.

Response

By this amendment, a new Fig. 3 has been added, showing the location of the plurality of apertures 35 disposed on the floor, including aperture 37. The specification describes 37 in terms of "a plurality of apertures", since only one aperture is visible in a cross-sectional view.

Rejection Under 35 U.S.C. §112

The Examiner rejected claim 7 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Specifically, the reference to "there are number of chambers in connection with the lowermost for isolation of the liquid material produced" was deemed unclear with respect to antecedent basis.

Response

Reconsideration and withdrawal of the rejection are respectfully requested.

35 U.S.C. §112, second paragraph, states that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

It is respectfully submitted that amended claim 7 now particularly points out and distinctly claims the subject matter. It is submitted that the amended language overcomes this rejection by clarifying the specified subject matter and by addressing the issue of antecedent basis.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 1, 2, 5 and 7-18 under 35 U.S.C. §103(a) as unpatentable over *Wadewitz '393*, taken in view of *Rihtamo*. Claims 3, 4 and 6 were rejected under 35 U.S.C. §103(a) as unpatentable over *Wadewitz '393* in view of *Rihtamo*, taken further in view of *Petzinger*. Claims 19 and 20 were rejected under 35 U.S.C. §103(a) as unpatentable over *Wadewitz '393* in view of *Petzinger*.

Response

This rejection is traversed as follows. To establish a *prima facie* case of obviousness, the Examiner must establish: (1) some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

A *prima facie* case of obviousness must also include a showing of the reasons why it would be obvious to modify the references to produce the present invention. *See Dystar Textilfarben GMBH v. C. H. Patrick*, 464 F.3d 1356 (Fed. Cir. 2006). The Examiner bears the

initial burden to provide some convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings. *Id.* at 1366.

Each of the claim rejections under 35 U.S.C. 103(a) describes *Wadewitz '393* which is cited as teaching a composting apparatus with a substantially airtight container and a series of conduits which have a plurality of holes passing through walls, collectively fed to a single exiting conduct. Claim 1 in the present application is an apparatus claim, which sets forth:

"... a container ... a series of supply conduits ... whereby when [a] pump operates air is drawn from upper regions of the container into the extraction conduit and forced out of the supply conduits to flow through the material being composted, wherein the aqueous liquids formed during treatment are held at a level lower than that of the supply conduits ... to allow liquid to pass ... into the sump ... a pump means to pump the liquid from the sump area and to disperse the liquid over the top of the material to be composted."

Claim 8 is a method claim, which describes the liquid extraction function:

"... extracting the collected liquid from the lower most level and reintroducing it into the top of the container."

Claim 19, also a method claim, describes the liquid extraction as:

"... maintaining such circulation for a sufficient period of time so as to effect a substantial pathogen kill in the composting material, and then collecting the liquid produced during the composting from a chamber positioned below the level of the material, and pumping the collected liquid from the chamber and dispersing the liquid over the top of the material."

There is no suggestion of or teaching toward an apparatus having all of the essential features of newly amended claims 1, 8 and 19 in the cited prior art documents. Instead, it is respectfully submitted that the cited references teach away from the claimed subject matter.

The *Wadewitz '393* citation is entirely silent on the issue of liquids in the container.

Similarly there is no discussion of recirculating gases in the reactor in Rhitamo. Instead, Rhitamo teaches a pipe system of "disposable nature" (at col. 3, line 50) which may be used for the external supply of any of "oxygen, steam, liquid and/or nutrients" (at col. 3, line 66).

Taken in view of the use of separate handling of the two fluids, as mentioned, *Wadewitz* '393 describes a single recirculation system. A combination of *Wadewitz* '393 with *Rihtamo* fails to suggest the use of separate systems. Instead, *Rihtamo* describes, "The liquid fed into the reactor may be liquid obtained from a recirculation system 7 or liquid 15 supplied from outside the apparatus." (*Rihtamo* at col. 3, lines 53-64.)

Neither document then identifies a problem or provides a teaching or suggestion that would direct a person skilled in the relevant art to combine the disclosures made therein. The combination of the liquid sump pump and the recirculation pump set forth in the present subject matter address the issue of separate treatment of two fluids. While the re-depositing of the liquid on the composting matter has a particular advantage, the present subject matter treats this separately from the circulation of gaseous extract, and further uses the liquid to advantage in composting by sumping and recirculating the liquid over the composting material. Therefore, rather than turning the liquid into a separate waste that requires special handling, it uses the liquid in the composting function itself. The claimed subject matter further presents the advantage of distributing the liquid with a separate sump pump, so that air recirculation is performed in a manner optimum for air recirculation and liquid recirculation is performed in a manner optimum for sumping the liquid.

Petzinger is cited to show particular configurations of the tank, but fails to suggest the use of pumping mechanisms. Instead *Petzinger* teaches collection of liquid in a holding tank which is presumably used as-is (commonly called "compost tea" sometimes used to fertilize house plants). This "teaches away from" Applicant's claimed subject matter in that the liquid is pumped back into the composting mass. (Regarding this distinction, it is also noted that in the

case of some forms of waste, e.g., the dead chickens described by *Wadewitz '393*, such use of "compost tea" for houseplants would be a rather unpleasant combination of the cited art.)

Applicants therefore respectfully submit that the cited prior art combination therefore fails to show or suggest Applicants' invention as set forth in claims 1, 3, 4, 6-11, 13-20, as well as new claim 22. It is therefore respectfully submitted that the rejection under 35 U.S.C. 103(a) should be withdrawn.

Double Patenting Rejections

In the Office Action, claims 8 and 12-19 were rejected under the doctrine of obvious-type double patenting over combinations of the above references and *Wadewitz '234*.

Response

This rejection is respectfully traversed as not meeting the requirements of *prima facie* case of obviousness under 35 U.S.C. 103(a). *Wadewitz '234* describes passing air through a composting mass, but does not describe the use of a separate pump for extraction and recirculation of liquid. Therefore there is no suggestion of Applicant's claimed combination in a combination of *Wadewitz '234* and the other cited references.

Applicants therefore respectfully submit that the cited prior art combination therefore fails to show or suggest Applicants' invention as set forth in claims 8 and 12-19, as well as new claim 22. It is therefore respectfully submitted that the obviousness-type double patenting rejection be withdrawn.

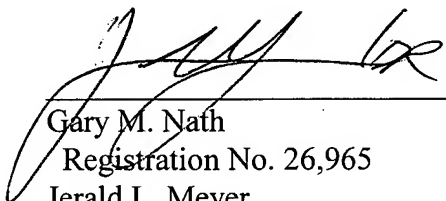
CONCLUSION

In light of the foregoing, Applicants submit that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner call the undersigned.

Respectfully submitted,
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SUBSTITUTE DRAWINGS

Substitute drawings are submitted herewith. The drawings add a new Fig. 3, showing apertures 35. Figs. 1 and 2 are replaced because their sheets included the PCT sheet indicia ("1/2") and there is now a third sheet.